

EXHIBIT A

Drakeford v. Dell Inc. and Kevin Rollins
Docket No. 07-CV-3490 (RMB) (DFE)

JUL 20 2007 2:40PM

DELL

NO. 312 P. 1

(Rev. 2/5/98) Summons in a Civil Action

United States District Court

SOUTHERN

DISTRICT OF

NEW YORK

Josephine Drakeford

SUMMONS IN A CIVIL CASE

V.

CASE NUMBER:

Kevin Rollins
Dell, Inc.

07 CV 3490
Judge Berman

TO: (Name and address of defendant)

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)
Pro Se Josephine Drakeford
55 East 99th Street, #8D
New York, New York 10029

An answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

J. MICHAEL McMAHON

MAY 02 2007

CLERK

DATE

Marcos Quintero

(BY) DEPUTY CLERK

JUL 20 2007 2:40 PM

JUDGE DELL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORKJosephine Drakeford

(In the space above enter the full name(s) of the plaintiff(s)/petitioner(s).)

v.

KEVIN ROLLINS & DELL, INC

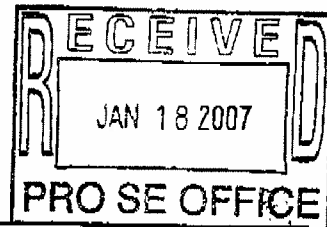
(In the space above enter the full name(s) of the defendant(s)/respondent(s).)

07 CV 3490 NO. 312 P. 2

I.F.P. GRANTED.Leave to proceed in this Court
without payment of fees is
authorized. 28 U.S.C. § 1915.So Ordered: REQUEST TO PROCEED
IN FORMA PAUPERIS
MAY 01 2007 (Date)UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORKMichael M. Wood
Chief Judge

I, Josephine Drakeford, (print or type your name) am the plaintiff/petitioner in the above entitled case and I hereby request to proceed *in forma pauperis* and without being required to prepay fees or costs or give security. I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefor, and that I believe I am entitled to redress.

1. If you are presently employed:
- give the name and address of your employer
 - state the amount of your earnings per month

N/A

2. If you are NOT PRESENTLY EMPLOYED:
- state the date of start and termination of your last employment
 - state your earnings per month

YOU MUST ANSWER THIS QUESTION EVEN IF YOU ARE INCARCERATED.

Retired in 2000 after beginning in 1991

3. Have you received, within the past twelve months, any money from any source? If so, name the source and the amount of money you received.

Social Security & N.Y.S. Pension

- a) Are you receiving any public benefits? ☒ No. ☐ Yes, \$ _____
- b) Do you receive any income from any other source? ☒ No. ☐ Yes, \$ _____

JUL 20 2007 2:41PM DELL

NO. 312 P. 3

4. Do you have any money, including any money in a checking or savings account? If so, how much?

MCU = \$68.00 Washington Mutual \$240 Wachovia \$68

5. Do you own any apartment, house, or building, stock, bonds, notes, automobiles or other property? If the answer is yes, describe the property and state its approximate value.

☐ No.

☒ Yes,

Stocks \$70

6. List the person(s) that you pay money to support and the amount you pay each month.

N/A

7. Do you pay for rent or for a mortgage? If so, how much each month?

\$ 330.00

8. State any special financial circumstances which the Court should consider.

I have an outstanding student loan of almost
\$2,000.00. Also, I have credit card debts of
almost \$5,000.00.

I understand that the Court shall dismiss this case if I give a false answer to any questions in this declaration. In addition, if I give a false answer I will be subject to the penalties for perjury.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 17th day of January, 2007.
date month year

Josephine Drakeford
signature

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011 1012 1013 1014 1015 1016 1017 1018 1019 1020 1021 1022 1023 1024 1025 1026 1027 1028 1029 1030 1031 1032 1033 1034 1035 1036 1037 1038 1039 1040 1

JUL 20 2007 2:41 PM Office of New York State Comptroller

NO. 312 P. 5



Alan G. Hevesi

New York State and Local Retirement System
Employees' Retirement System
Police and Fire Retirement System

110 State Street, Albany, New York 12244-0001
Phone: 1-866-805-0990 or 518-474-7736 Fax: 518-402-4433
E-mail: nyslrsinfo@osc.state.ny.us Web: www.osc.state.ny.us/retire



Mr. Josephine Drakeford
55 E 99th St Apt 8d
Ny NY 10029

September 2006
Office use: 000010105
Reg. No: 37418142
Ret. No: 086778070

YOUR 2006 COLA INCREASE INFORMATION

Starting with your September 30, 2006 payment:

Your monthly COLA benefit will include an increase of \$5.67.

Your gross monthly pension will increase from \$332.71 to \$338.38. (This does not reflect adjustments for taxes, health insurance, dues or any other amount that may be deducted from your monthly pension or for Medicare adjustments that may be added to your monthly pension.)

These figures are based on an annual cost-of-living increase of 1.7 percent.

If you have any questions, contact our Call Center toll-free at 1-866-805-0990, or 518-474-7736 if you live within the Albany, New York area.

JUL. 20. 2007 2:42PM

DELL

NO. 312

P. 6

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

X

Judge Berman

JOSEPHINE DRAKEFORD,

07 CV 3490

COMPLAINT

Plaintiff,

- against -

KEVIN ROLLINS and DELL, INC.,

Defendants.

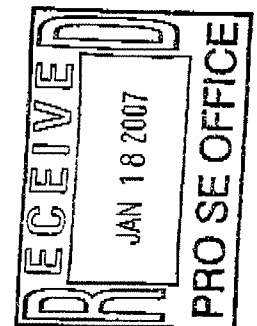
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JOSEPHINE DRAKEFORD, plaintiff pro se, residing at 55 East 99th Street, New York, 10029 complains of the defendants and alleges upon information and belief as follows:

AS AND FOR A FIRST CAUSE OF ACTION ON BEHALF OF THE
PLAINTIFF, JOSEPHINE DRAKEFORD

FIRST: That at all times hereinafter mentioned, the defendants, KEVIN ROLLINS, CEO and DELL, located at 1 Dell Way, Round Rock, TX 78682-0001 engages in interstate commerce through sales of computers.

SECOND: An attempt was made by defendants to charge me for late fees unlawfully on September 14, 2006, a charge of \$42 extra. "John" from Dell called and said my account was in collections because I had not paid them. This harassment was the climax of years of interference and refusal to honor service contracts by Dell (Exhibits I and J). Also, as of January 17, 2007 defendants have continued to refuse to repair the software damage in the computer, the inability to connect to the internet, the loss of the A drive in the computer and a pop-up "Butter" which performs an abnormal program



JUL 20 2007 2:42PM DELL

NO. 312 P. 7

termination. This is in breach of a two-year service contract (#29339687 Exhibits A, Band K) purchased March 10, 2005. When plaintiff called defendants on June 27th, 2006 at approximately 3:10 p.m. she was told the contract expired in May 2006. They refused to acknowledge that this was a two-year contract which would not expire until March 10, 2007. 74 Am Jur 2d Sec. 32 Interference with property rights: "The law of torts is concerned with the duty to respect the property of others as in Hill v. City of Boston, 122 Mass. 344, 1877 WL 10155 (1877); Tuttle v. Buck, 107 Minn. 145, 119 N.W. 946 (1909) and a cause of action in tort may be predicated upon an unlawful interference with the enjoyment by another of his private property as illustrated in Manro v. Almeida, 23 U.S. 473, 6 L.Ed. 369 (1825); Hodges v. Pine product Co., 135 Ga. 134, 68 S.E. 1107 (1910).

THIRD: That by reason of the above-stated facts, the defendants, their agents, servants and employees are liable to the plaintiff in strict tort.

FOURTH: That as a result of the aforesaid, the plaintiff suffers damages because of harassment, "your account is late and will be in collections" as well as from defective services and a failure to provide adequate service. Once a party to a contract has made a promise, that party must perform or respond in damages for its failure, even when unforeseen circumstances make performance burdensome was the ruling in Comprehensive Bldg. Contractors, Inc. v. Pollard Excavating, Inc., 674 N.Y.S. 2d 869, 251 A.D. 2d 95. Additionally, this breach of contract and interference with the property of plaintiff violates her constitutional rights. Amendment XIV to the U. S. Constitution, Sec. 1, speaks of the deprivation of the rights of a person, his life, liberty or property. Plaintiff suffers from mental anguish because she has to leave her home and connect to the internet and use her floppy discs at the public library. Plaintiff seeks recovery for this

JUL 20 2007 2:42PM DELL

NO. 312 P. 8

service has been the expected. Also, an attempt to have the contract renewed has been inoperative because she is unable to meet the demands of the contract. She expects manuscripts to be presented with floppy discs (Exhibit H). Additionally plaintiff seeks recovery in the amount of \$5,000 for each time she called and was told "Your contract has expired."

AS AND FOR A SECOND CAUSE OF ACTION ON BEHALF OF THE
PLAINTIFF, JOSEPHINE DRAKEFORD

FIFTH: The plaintiff repeats and reiterates all the allegations contained in paragraphs numbered "FIRST" through "FOURTH" inclusive, with the same force and effect as though fully set forth at length herein. Plaintiff has always purchased service contract with defendants and each time she would call she would be told "Your contract has expired." (Exhibit G). At another time when plaintiff called for technical support a male technician stated "that (the contract) was for the hardware." Plaintiff knew that the hardware was still under guarantee and this was an absurdity. This technician, upon being given the Contract Number, 293396877, said it would show up on the computer so that when I would call they could see that the contract was still in force. This never happened.

SIXTH: That by reason of the above-stated facts, the defendant, its agents, servants and employees are liable to the plaintiff in strict tort.

SEVENTH: That as a result of the aforesaid, the plaintiff suffered damages because of defective services and a failure to provide adequate service. Plaintiff suffers from mental anguish because, as a writer, she is experiencing long delays in typing her

JUL 20 2007 2:43PM DELL

NO. 312 P. 9

manuscripts (Exhibit H). Also, because defendants have damaged the A drive, she is unable to produce manuscripts from floppy discs as well as perform other business functions that are on floppy discs. Plaintiff seeks recovery for this deliberate interference with her work, life and property in the sum of \$50,000.

AS AND FOR A THIRD CAUSE OF ACTION ON BEHALF OF THE
PLAINTIFF, JOSEPHINE DRAKEFORD

EIGHTH: The plaintiff repeats and reiterates all the allegations contained in paragraphs numbered "FIRST" through "SEVENTH" inclusive, with the same force and effect as though fully set forth at length herein.

NINTH: That by reason of the above-stated facts, the defendants, their agents, servants and employees are liable to the plaintiff in strict tort.

TENTH: That as a result of the aforesaid, the plaintiff suffered damages because of defective services and a failure to provide adequate service. Plaintiff suffers from mental anguish because, as a writer, she is experiencing long delays in typing her manuscripts (Exhibit H). Also, because defendants have damaged the A drive, she is unable to produce manuscripts from floppy discs as well as perform other business functions that are on floppy discs. Plaintiff seeks recovery for this deliberate interference with her work, life and property in the sum of \$50,000. Plaintiff also seeks recovery for this violation of her constitutional rights in the sum of \$500 for every day that her internet service has been disconnected. Also, an additional \$500 for each day that her A drive has been inoperative and an additional \$5,000 for each time she called and was told "Your contract has expired."

JUL 20 2007 2:43PM DELL

NO. 312 P. 10

**AS AND FOR A FOURTH CAUSE OF ACTION ON BEHALF OF THE
PLAINTIFF, JOSEPHINE DRAKEFORD**

ELEVENTH: The plaintiff repeats and reiterates all the allegations contained in paragraphs numbered "FIRST" through "TENTH" inclusive, with the same force and effect as though fully set forth at length herein. After the warranty period was over (computer was purchased in 2003), a service contract would be bought for technical support, and every service contract that plaintiff has ever purchased from Dell has been breached by them (C.J.S. #561). Plaintiff has always been told either "you need a service contract" or "your service contract has expired."

TWELFTH: That by reason of the above-stated facts, the defendants, their agents, servants and employees are liable to the plaintiff in strict tort.

THIRTEENTH: That as a result of the aforesaid, the plaintiff suffered damages because of defective services and a failure to provide adequate service. Plaintiff suffers from mental anguish because, as a writer, she is experiencing long delays in typing her manuscripts (Exhibit H). Also, because defendants have damaged the A drive, she is unable to produce manuscripts from floppy discs as well as perform other business functions that are on floppy discs. Plaintiff seeks recovery for this deliberate interference with her work, life and property in the sum of \$50,000. Plaintiff also seeks recovery for this violation of her constitutional rights in the sum of \$500 for every day that her internet service has been disconnected. Also, an additional \$500 for each day that her A drive has been inoperative and an additional \$5,000 for each time she called and was told "Your contract has expired."

JUL 20 2007 2:43PM

DELL

NO. 312 P. 11

AS AND FOR A FIFTH CAUSE OF ACTION ON BEHALF OF THE
PLAINTIFF, JOSEPHINE DRAKEFORD

FOURTEENTH: The plaintiff repeats and reiterates all the allegations contained in paragraphs numbered "FIRST" through "THIRTEENTH" inclusive, with the same force and effect as though fully set forth at length herein. As you can see from the additional exhibits, Dell has consistently breached every contract made with plaintiff (Exhibits C, D, E and F). The service contracts by Dell are nothing but fraudulent and false representations to induce consumers to hand over money and get no service. This is illustrated in the case of Baldrige v. Hadley, C.A. 10 (N.M.) 1974, F. 2d 859, certiorari denied 94 S.Ct. 2608, 417 U.S. 910, 41 L.Ed. 2d 214, rehearing denied 95 S. Ct. 159, 419 U.S. 886, 42 L.Ed. 2d 130: "Generally, fraud consists of some deceitful practice or willful device resorted to for purpose of inducing another, in reliance on it, to surrender money, property, or legal rights; it connotes perjury, falsification, concealment and misrepresentation." Also, in violation of constitutional rights, Amendment IV "The right of the people to be secure in their persons, houses, papers, and effects," the defendants have prevented plaintiff from working continuously on computer as "Butter" pops up (an abnormal termination of the program), or the screen blackens completely, some times for half an hour at a time. Plaintiff has lost books and other business documents because of the interference and damage defendants have caused to her computer.

FIFTEENTH: That by reason of the above-stated facts, the defendants, their agents, servants and employees are liable to the plaintiff in strict tort.

SIXTEENTH: That as a result of the aforesaid, the plaintiff suffered damages because of defective services, interference and a failure to provide adequate service.

JUL 20 2007 2:44PM DELL

NO. 312 P. 12

Plaintiff suffers from mental anguish, as well as harassment because she has to leave her home and connect to the internet through the public library. Plaintiff seeks recovery for this deliberate interference with her work, life and property in the sum of \$50,000. Plaintiff also seeks recovery for this violation of her constitutional rights in the sum of \$500 for every day that her internet service has been disconnected. Also, an additional \$500 for each day that her A drive has been inoperative and an additional \$5,000 for each time she called and was told "Your contract has expired."

AS AND FOR A SIXTH CAUSE OF ACTION ON BEHALF OF THE
PLAINTIFF, JOSEPHINE DRAKEFORD

SEVENTEENTH: The plaintiff repeats and reiterates all the allegations contained in paragraphs numbered "FIRST" through "SIXTEENTH" inclusive, with the same force and effect as though fully set forth at length herein. On Monday, June 27th, 2006 a Dell representative, Aaron Hamlet, (1-800-624-9896 ext. 7242918) spent two hours on the phone trying to get me connected to the internet after Dell did not provide me with service for six months. On June 27, 2006, after calling him at 10:30 a.m. I did not hear from him until 6 p.m. This time was not convenient and plaintiff was mentally exhausted from disputing with other agents of defendants a few hours prior. It seems strange that a computer giant is unable and unwilling to provide computer service in less than an hour.

EIGHTEENTH: That by reason of the above-stated facts, the defendants, their agents, servants and employees are liable to the plaintiff in strict tort.

NINETEENTH: That as a result of the aforesaid, the plaintiff suffered damages because of defective services, interference and a failure to provide adequate service.

JUL 20 2007 2:44PM DELL

NO. 312 P. 13

Plaintiff suffers from mental anguish, as well as harassment because she has to leave her home and connect to the internet through the public library. Plaintiff seeks recovery for this deliberate interference with her work, life and property in the sum of \$50,000. Plaintiff also seeks recovery for this violation of her constitutional rights in the sum of \$500 for every day that her internet service has been disconnected. Also, an additional \$500 for each day that her A drive has been inoperative and an additional \$5,000 for each time she called and was told "Your contract has expired."

AS AND FOR A SEVENTH CAUSE OF ACTION ON BEHALF OF THE
PLAINTIFF, JOSEPHINE DRAKEFORD

TWENTIETH: The plaintiff repeats and reiterates all the allegations contained in paragraphs numbered "FIRST" through "NINETEENTH" inclusive, with the same force and effect as though fully set forth at length herein. Plaintiff is suffering damages because of being physically and emotionally drained from calling Dell repeatedly and getting no results. By not being connected to the internet, plaintiff is harassed by a Symantec pop-up which slows down her typing. This pop-up would not exist at all if plaintiff had been connected to the internet.

TWENTY-FIRST: That by reason of the above-stated facts, the defendants, their agents, servants and employees are liable to the plaintiff in strict tort.

TWENTY-SECOND: That as a result of the aforesaid, the plaintiff suffered damages because of defective services, interference and a failure to provide adequate service. Plaintiff suffers from mental anguish, as well as harassment because she has to leave her home and connect to the internet through the public library. Plaintiff seeks recovery for this deliberate interference with her work, life and property in the sum of

JUL 20 2007 2:45PM DELL

NO. 312 P. 14

\$50,000. Plaintiff also seeks recovery for this violation of her constitutional rights in the sum of \$500 for every day that her internet service has been disconnected. Also, an additional \$500 for each day that her A drive has been inoperative and an additional \$5,000 for each time she called and was told "Your contract has expired."

AS AND FOR AN EIGHTH CAUSE OF ACTION ON BEHALF OF THE
PLAINTIFF, JOSEPHINE DRAKEFORD

TWENTY-THIRD: The plaintiff repeats and reiterates all the allegations contained in paragraphs numbered "FIRST" through "TWENTY-SECOND" inclusive, with the same force and effect as though fully set forth at length herein that because of the lack of internet service, the Symantec pop-up constantly slowed down her typing. Many times plaintiff faced deadlines and had to type continuously and this was extremely difficult with the computer malfunctioning. As plaintiff types, the pop-up appears and she has to stop and close it throughout the typing. This is a tremendous annoyance and an unnecessary interference.

TWENTY-FOURTH: That by reason of the above-stated facts, the defendants, their agents, servants and employees are liable to the plaintiff in strict tort.

TWENTY-FIFTH: That as a result of the aforesaid, the plaintiff suffered damages because of defective services, interference and a failure to provide adequate service. Plaintiff suffers from mental anguish, as well as harassment because she has to leave her home and connect to the internet through the public library. Plaintiff seeks recovery for this deliberate interference with her work, life and property in the sum of \$50,000. Plaintiff also seeks recovery for this violation of her constitutional rights in the sum of \$500 for every day that her internet service has been disconnected. Also, an

JUL 20 2007 2:45PM DELL

NO. 312 P. 15

additional \$500 for each day that her A drive has been inoperative and an additional \$5,000 for each time she called and was told "Your contract has expired."

AS AND FOR A NINTH CAUSE OF ACTION ON BEHALF OF THE
PLAINTIFF, JOSEPHINE DRAKEFORD

TWENTY-SIXTH: The plaintiff repeats and reiterates all the allegations contained in paragraphs numbered "FIRST" through "TWENTY-FIFTH" inclusive, with the same force and effect as though fully set forth at length herein. Pursuant to Sec. 1001 USCA, plaintiff seeks relief from this campaign of fraud, falsification, deceit, scheming to defraud, harassment and breach of contract. Defendants violated plaintiff's right to be free of defrauding, harassment and preferential treatment. USCA, Sec. 202 well describes the activities of defendants "(a) Charges, services, etc. It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage."

TWENTY-SEVENTH: That by reason of the above-stated facts, the defendants, their agents, servants and employees are liable to the plaintiff in strict tort.

TWENTY-EIGHTH: That as a result of the aforesaid, the plaintiff suffered damages because of defective services, interference and a failure to provide adequate service. Plaintiff suffers from mental anguish, as well as harassment because she has to leave her home and connect to the internet though the public library. Plaintiff seeks

JUL 20 2007 2:45PM DELL

NO. 312 P. 16

recovery for this deliberate interference with her work, life and property in the sum of \$50,000. Plaintiff also seeks recovery for this violation of her constitutional rights in the sum of \$500 for every day that her internet service has been disconnected. Also, an additional \$500 for each day that her A drive has been inoperative and an additional \$5,000 for each time she called and was told "Your contract has expired."

The United States District Court has jurisdiction because of the violation of federal laws, and because defendants engage in interstate commerce. 15A Am Jur 2d Sec. 7 What Law governs "Interstate commerce is controlled by the applicable acts of Congress governing the rights of the parties to such transactions, Atlantic Cleaners & Dyers v. U.S., 286 U.S. 427, 52 S. Ct. 607, 76 L. Ed 1204 (1932).

"What constitutes interstate commerce is a federal question controlled by decisions of the United States Supreme Court, Milton S. Kronheim & Co., Inc. v. District of Columbia, 91 F. 3d 193 (D.C. Cir. 1996). Also, in New York, it is the duty of courts to decide the applicable law in cases involving contracts, Weinreich v. Sandhaus, 850 F. Supp. 1169, opinion amended 156 F.R.D. 60: "Interest analysis is normally applied by New York courts to choice of law issues concerning contract disputes."

17 Am. Jur 2d Sec. 591 "Where the facts presented are undisputed, whether they constitute a performance or a breach of a written contract is a question of law for the court." This opinion was rendered in the case of N. Estrada, Inc. v. Terry, 293 S.W. 286 (Tex. Civ. App. Texarkana 1927).

Additionally, 32 Am. Jur 2d, Sec. 1028 "Whether an action is between citizens of different states, for diversity purposes, is a question of law to be determined by the trial

JUL 20 2007 2:46PM DELL

NO. 312 P. 17

court and is controlled by the status of the parties at the time suit is begun (Barrett v. Covert {Ed Pa} 354 F. Supp. 446)

Under New York law, every party to contract has affirmative obligation to use its best efforts to meet contract's terms. This case was McNally Wellman Co., a Div. of Boliden Allis, Inc. v. New York State Elec. & Gas Corp. 63 F. 3d 1188. 22 Am Jur 2d Sec. 17 "The law presumes damage from a breach of a contract...."

Constitutional rights have been violated by defendants. Amendment XIV to the U.S. Constitution, Sec. 1, speaks of the deprivation of the rights of a person, his life, liberty or property. Plaintiff suffers from mental anguish because she has to leave her home and connect to the internet and use her floppy discs at the public library. Amendment IV "The right of the people to be secure in their persons, houses, papers, and effects," the defendants have prevented plaintiff from working continuously on computer as "Butter" pops up (an abnormal termination of the program), or the screen blackens completely, some times for half an hour at a time. Plaintiff has lost books and other business documents because of these gross violations of her constitutional rights.

WHEREFORE, plaintiff prays the court for judgment against defendants as follows:

- (a) Discontinuance of lying "Your contract has expired," or "Your contract is only for hardware."
- (b) Enjoin defendants from committing any further acts in furtherance of this nuisance—refusing to provide services in compliance with contract.
- © Award plaintiff compensatory and incidental damages recovery for this deliberate interference with her work, life and property in the sum of \$50,000.

JUL 20 2007 2:46PM DELL


NO. 312 P. 18

From November 2005 until November 2006 equals 365, and December 2006 until January 17, 2007 totals 48 days multiplied by \$500 for every day that her internet service has been disconnected constitutes a grand total of 413 days and the amount due is \$206,500. Also, an additional \$500 for each day that her A drive has been inoperative, from June 2006 until January 17, 2007 a total of 231 days, and the amount is \$115,500. An additional \$5,000 for each time she called and was told "Your contract has expired." Plaintiff has been told this at least five times, and this is a total of \$25,000. The sum payment, not including incidental damages is \$347,000.00

- (d) Award plaintiff the right to proceed in forma pauperis, the right to appeal, together with such other relief, not necessarily limited to pecuniary relief, as the Court may deem plaintiff entitled to receive.

Dated: New York, N. Y.

January 17, 2007


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